

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**ROBERT C. MARKS, SR.,**

**Plaintiff,**

**v.**

**STATE OF TENNESSEE,**

**Defendant.**

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**No: 3:06-cv-01208**

**Jury Demand**

**Judge Haynes**

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**DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S  
MOTION FOR TO ALTER OR AMEND THE JUDGMENT AND  
PLAINTIFF'S MOTION FOR ORAL ARGUMENT**

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Comes now the Defendant, State of Tennessee, by and through the Tennessee Attorney General's Office, and hereby submits this Response in Opposition to Plaintiff's Motion to Alter or Amend the Judgment and Motion for Oral Argument. The Defendant previously filed a Motion to Dismiss on Feb. 2, 2007, in which it argued, *inter alia*, that the case should be dismissed due to the *Rooker-Feldman* doctrine, and this Court granted the Motion on that basis on Aug. 8, 2007. [Docket Entry Nos. 6, 24] Plaintiff filed a timely appeal. [Docket Entry No. 30] The Sixth Circuit reversed this Court's decision and remanded for further proceedings on Feb. 10, 2009. *Marks v. Tennessee*, 554 F.3d 619 (6<sup>th</sup> Cir. 2009). Since that decision, Plaintiff has taken no steps to continue the prosecution of his lawsuit. Accordingly, this Court entered an Order dismissing the action with prejudice on Nov. 8, 2011. [Docket Entry No. 35] Judgment was entered the same day. [Docket Entry No. 36]

Plaintiff filed a Motion to Alter or Amend Judgment on Dec. 6, 2011, in which he asks the Court to vacate the judgment of dismissal. [Docket Entry No. 39] He also filed a Motion for Oral Argument on the Motion to Alter or Amend the Judgment. [Docket Entry No. 45] As the basis of his motion, he contends that he has been too ill to prosecute the case until October, 2011, and he submits several affidavits attesting to his various health concerns. Defendant is sympathetic to Plaintiff's health conditions but notes that there is nothing in either Plaintiff's Motion or any of the documents filed in support thereof, which explain why Plaintiff failed to communicate his health problems with either this Court or Defendant. There is nothing to indicate that Plaintiff was unable to at least file some sort of document with the Court or to ask opposing counsel for a stay or some other relief during the pendency of his health issues.

Furthermore, his Motion states that he was "too ill to prosecute the case from summer of 2009 to October 2011." [Docket Entry No. 39] The Order dismissing the case was not entered until two months later on Nov. 8, 2011. [Docket Entry No. 35] Plaintiff offers no explanation for why he failed to take any action to prosecute his case during the two months that passed between October and November. Accordingly, he is not entitled to the relief he seeks.

If the Court determines that Plaintiff's Motion is well-taken, however, Defendant respectfully contends that the appropriate relief is to amend the Order of Dismissal to indicate that it is without prejudice. Given Plaintiff's failure to both take any action to make anyone aware of his health problems up through October, 2011, and his subsequent failure to take any action to prosecute the case from October until the filing of his Motion in December, Defendant contends it is appropriate to amend the Order of Dismissal to reflect that it is without prejudice rather than to simply vacate the Order. In this way, Plaintiff will be required to take affirmative

steps to demonstrate his willingness to prosecute the case rather than let it linger as he previously has.

Finally, this Court should deny Plaintiff's Motion for Oral Argument. Oral argument is not necessary for the resolution of the issues raised in Plaintiff's Motion to Alter or Amend the Judgment.

Respectfully submitted,

ROBERT E. COOPER, JR.  
ATTORNEY GENERAL AND REPORTER

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on Dec. 15, 2011, a copy of this Response was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. The pro se Plaintiff will be served by regular U.S. Mail at the following address:

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Parties may access this filing through the Court's electronic filing system.

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